

June 27, 2018

Mr. Devin Leary
Human and Rohde, Inc.
512 Virginia Avenue
Towson, MD 21286

Re: Jindra Property
Forest Conservation Variance
Tracking # 02-18-2742

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on May 2, 2018. This request would allow removal of three specimen trees in conjunction with a proposed two lot minor subdivision and the construction of a new home. There are a total of nineteen specimen trees on the property. All three specimen trees proposed for removal are in fair condition. The three specimen trees are proposed for removal because they will be impacted by the proposed grading and construction of a retaining wall for the new house.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The petitioner is proposing the construction of a new house as part of a two lot minor subdivision. Impacts to the three specimen trees could be avoided with the construction of a smaller house or moving the proposed house closer to the existing house. However, these options are not practical given the average home size in the neighborhood and the need to maintain an adequate distance between the existing and proposed homes. The proposed house size and location is appropriate because the proposed house is similar in size to other houses in the neighborhood and the proposed location will minimize impact to high quality forest while avoiding an area of concentrated drainage. Since it is possible to develop the property without impacting the specimen trees, compliance with the Forest Conservation Law will not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has been not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The need to remove the specimen trees is a result of their distribution across the property and the grading required to construct a home along the side of a ridge. These circumstances are unique to this property and not the general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The other lots in this neighborhood were developed in a similar fashion to the proposed dwelling. Therefore, we find that granting the variance will not alter the essential character of the neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. There is a stream and associated wetlands along the rear property line. The wooded area adjacent to the stream which includes the remaining sixteen specimen trees will be protected in a Forest Buffer and Forest Conservation Easement. In addition, storm water management (SWM) will be provided in accordance with Baltimore County's SWM Law. Therefore, we find that granting the variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The variance request arises from the distribution of the specimen trees on the property. In order to protect the majority of the specimen trees and avoid an area of concentrated drainage, the proposed house will be located along a side slope. As a result, grading and construction of a retaining wall will be required to accommodate the proposed house and will necessitate impact of the three specimen trees. Therefore, the petitioner has taken no actions necessitating this variance prior to its request, and this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Only three of the nineteen specimen trees located on the property are proposed for removal. The remaining sixteen specimen trees will be protected in a Forest Buffer and Forest Conservation Easement. There are two forest stands on the property: an early successional forest impacted by non-native invasive plant species and a larger mid-successional forest comprised mostly of large oaks and beech and a few non-native invasive plant species. In addition to protecting the remaining sixteen species, the proposed conservation easement will protect most of the higher quality mid-successional forest on site. Given that the property owner has limited their proposed tree removal to only three of the nineteen specimen trees and the remaining specimen trees will be protected in a conservation easement with the majority of the higher quality forest on site, we find that this variance request is consistent with the spirit and intent of Article 33 of the Baltimore County Code. Therefore, this criterion has been met.

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Based on our review, this Department finds that all of the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. No mitigation is required for the removal of the three specimen trees because they are located within the forest onsite and forest conservation will be addressed for the minor subdivision
2. The final forest conservation plan must reflect the conditions of this variance and show the critical root zone (CRZ) of all specimen trees on or near the property (i.e. with CRZ on the property).
3. All plans prepared for Jindra Property must include the following note:

“A special variance to the Forest Conservation Law was granted by Baltimore County Department of Environmental Protection & Sustainability on June 27, 2018 to allow the removal of three specimen trees. No mitigation is required for the removal of these specimen trees since they are located within the forest onsite and forest conservation will be addressed for the minor subdivision. “

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Gris Batchelder at (410) 887-3980.

Sincerely,

David V. Lykens
Deputy Director

DVL/cgb

cc : Marian Honeczy, Maryland Department of Natural Resources

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I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Responsible Party's Signature

Date

Responsible Party's Printed Name